



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 648, 660, and 679

[Docket No. 220805-0170]

RIN 0648-BJ33

Establishment of National Minimum Insurance Standard for National Marine Fisheries Service Programs that Permit or Approve Observer Providers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to establish a uniform, nationally consistent minimum insurance standard that would apply in regional regulatory programs that authorize an observer provider to deploy a person in any mandatory or voluntary observer program and that specify responsibilities of authorized providers. NMFS has concluded that this action is necessary to clarify the types of insurance that are appropriate to address the financial risks that observer coverage presents in any federally managed fishery that is subject to observer coverage. This rule also revises regional observer program regulations to reference the national minimum insurance standard. The rule does not modify existing regional observer program regulatory procedures that specify how an observer provider demonstrates compliance with insurance requirements.

DATES: *Effective date:* This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance date: Compliance is not required until or during the next insurance certification or [INSERT DATE 150 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever date is later, after which time NMFS may request observer providers

that are approved to deploy observers to provide a certificate of insurance that demonstrates compliance with this final rule.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Dennis Hansford, 301-427-8136 or *dennis.hansford@noaa.gov*.

SUPPLEMENTARY INFORMATION: The insurance standard established in this final rule provides a nationally consistent suite of insurance coverages that an observer provider seeking authorization, or that has been authorized, must have to mitigate the financial risks associated with providing observer services; specifically observer deployments to fishing vessels or shoreside locations such as processing facilities, and those that arise with training personnel for these deployments. Through compliance with this minimum standard, observer providers would be properly insured, thereby mitigating the financial risks that fishing vessels, first receivers, and shoreside processors have when complying with observer coverage requirements.

Background

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*, establishes a national program for conservation and management of fishery resources within the United States Exclusive Economic Zone (EEZ). *See id.* 1801(a)(6), 1811(a). NMFS, acting under authority delegated from the Secretary of Commerce, is responsible for managing fisheries under the MSA, in conjunction with eight regional fishery management councils (Councils) established under the Act. *See id.* 1852(a). Each Council has authority to develop fishery management plans (FMPs) for fisheries in a specific geographical area and to deem proposed regulations that are necessary for plan implementation. *See id.* 1852(a), (c).

Collection of information on fishing and fish processing, such as type and quantity of fishing gear used, catch in numbers of fish or weight thereof, fishing locations, and biological information, are critical to effective fishery management. *See id.* 1853(a)(5). To obtain this information, the MSA authorizes, among other things, that an FMP may “[r]equire that one or more observers be carried on board a vessel of the United States engaged in fishing for species

that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery . . .”. *See id.* 1853(b)(8). The MSA defines the term “observer” as “any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.” *See id.* 1802(31). This definition would thus cover persons referred to in FMPs and regulations as “observers” as well as “catch-monitors” or “at-sea monitors.” In this final rule, the term “observer” refers to a person who is deployed as an observer, a catch or at-sea monitor on a fishing vessel or mothership, or as an observer deployed to a shoreside first receiver location or processing facility. Also, in the preamble of this final rule, NMFS refers to a company that provides observer or catch monitor or at-sea monitor services as an “observer provider.”

At present, all at-sea and shoreside observer deployments for NMFS observer programs are staffed by observer providers. These companies provide observer staffing support under two distinct models: 1) direct service, where the NMFS observer program contracts with an observer provider and oversees the provider’s services based on the terms of the contract; and 2) industry-funded service, where the observer provider provides services directly to a vessel or a fleet of vessels, and a NMFS regional observer program oversees the provision of those services based on requirements set forth in NMFS regulations.

In the North Pacific and most West Coast programs, an observer provider must be permitted under the programs’ regulations and satisfy other responsibilities specified in regulations in order to provide services in either the direct contract model or industry-funded model. The North Pacific and West Coast programs have regulatory-based insurance requirements for observer providers that are permitted to deploy observers. Permitted observer providers must demonstrate compliance with these requirements on an annual basis by providing the relevant program copies of certificates of insurance that name the applicable program as the certificate holder and that verify that the company has the insurance specified in the applicable regulation.

In the Northeast/Mid-Atlantic region an observer provider must be approved to provide services in the at-sea sampler/observer coverage program or at-sea monitoring services in the Northeast Multispecies sector program. The Northeast at-sea sampler/observer coverage program insurance requirements are included as elements of an approved program provider application. In other words, an observer provider must demonstrate evidence that it holds the insurance specified in the regulation as part of its application to become an approved provider. Likewise, as part of an application to be an approved services provider in the Northeast Multispecies sector at-sea monitoring program, a company must demonstrate that it holds insurance that NMFS deems adequate.

The Southeast, Southwest, and Pacific Islands programs use only the direct contract model, and do not have regulations to authorize a company to deploy observers in their programs through an approval or permit process. Nor do these programs have regulations that specify observer provider responsibilities. Further information about NMFS' regional observer programs is available at <https://www.fisheries.noaa.gov/topic/fishery-observers>.

In 2014, NMFS initiated an evaluation of observer provider insurance requirements in North Pacific observer program regulations. This effort was prompted by a letter from Alaskan Observers Inc. (AOI) to the North Pacific Fishery Management Council (NPFMC) which asserted that some North Pacific insurance requirements are excessive or inapplicable to observer provider operations. AOI also asserted that there are inconsistent insurance requirements among regional observer programs. In a 2015 letter to the NPFMC Executive Director, NMFS agreed with AOI's views that certain insurance requirements are necessary and noted that NPFMC could consider revising those North Pacific observer program regulations to specify different types of insurance. NMFS then initiated a broader, national evaluation of observer provider insurance regulation to address concerns with the North Pacific Observer program requirements that are reflected in other program regulations and to address the lack of consistency between regional requirements. Through this evaluation, NMFS obtained extensive input from observer

providers, insurance experts, and other interested parties, on the different types of insurance and associated coverage amounts that are needed to address the financial risks that observer deployments present in any federally managed fishery that is subject to observer coverage. Based on this effort, and internal research and analysis, NMFS published a proposed rule to establish a uniform, nationally consistent minimum insurance standard that would apply in regional regulatory programs that authorize an observer provider to deploy a person in any mandatory or voluntary observer program and that specify responsibilities of authorized providers (86 FR 66259; November 22, 2021). NMFS concluded that establishment of a minimum insurance standard for observer providers is necessary to clarify the types of insurance that are appropriate to mitigation the financial risks associated with provided observers services; specifically observer deployments to fishing vessels or shoreside locations such as processing facilities, and those that arise with training personnel for these deployments. Further background on NMFS' development of, and rationale for specific elements of the national minimum insurance standard is available in the proposed rule.

Responses to Public Comments

NMFS received comments on the proposed rule in three letters received from the Purse Seine Vessel Owners' Association (PSVOA), Gallagher Insurance (Gallagher), and LIG Marine Managers. Summaries of the comments and agency responses are provided below.

Comment 1. Gallagher commented on NMFS' citation to a 2017 Bureau of Labor Statistics, Census of Fatal Occupational Injuries report that ranked commercial fishing as one of the most dangerous occupations and NMFS' suggestion that, because observers are usually deployed to commercial fishing vessels, observers' risk of occupational injury is equal to that of commercial fishermen. Gallagher noted that an occupation with a high Fatal Occupational Injuries ranking does necessarily mean that it has a high level of Occupation Injury overall. Certain characteristics of commercial fishing – a relatively low number of employees compared to other food processing industries and a unique at-sea work environment – lead it to having a

higher level of per-employee fatalities, but not necessarily a higher level of overall occupational injuries compared to other industries. Lastly, for observers, several factors mitigate the risk of occupational injury that is otherwise faced by commercial fishermen, including: work stations designated for observers; different proximity to mechanical equipment, and deployment to processing vessels or motherships or shoreside facilities which have less or no risk of sinking.

Response. NMFS agrees that a high Fatal Occupational Injuries ranking does not necessarily mean a high level of Occupation Injury overall for commercial fishing. NMFS also agrees that the risk of observer occupational injury may not always be equivalent to such risks for commercial fishermen. However, NMFS maintains its view that occupational injury risks faced by commercial fishermen are relevant to assessing, as a general matter, the risks for observers and the minimum level of insurance observer providers should have to insure against those risks.

Comment 2. In response to NMFS' specific request for comments on the issue, PSVOA expressed strong support for enhancing the proposed Marine General Liability (MGL) policy requirement with an endorsement that extends protection to vessel or shoreside processor owners from legal actions filed by an observer. Such an endorsement should be added, because vessel owners face significant exposure to liability from incidents that arise involving compliance with federal observer coverage requirements. The endorsement should name a vessel owner as a party that will be indemnified against a lawsuit or other legal action that seeks redress of an observer injury or death.

Response. NMFS recognizes PSVOA's concern that vessel owners have some risk of legal actions filed against them by observers, whether specifically or as part of an action brought against the employer. However, NMFS has decided not to add an endorsement to the MGL policy requirement in the rule. The proposed rule noted that the incidence or risk of observer-initiated legal actions against parties other than their employer are likely to be low, and NMFS did not receive public comments that would affect that conclusion. Such risks should be

addressed through the Marine Employer's Liability (MEL) policy element of the minimum insurance standard. In addition, the minimum insurance standard is intended to protect vessel and shoreside processor owners against employer-based claims. Based on available information about risks and costs, NMFS believes that requiring observer providers to have an enhanced MGL policy that protects vessel and shoreside processor owners against any legal action brought by an observer, not just those that are employer-based, is too broad and overly burdensome. For that same reason, NMFS also declines PSVOA's request that the minimum insurance standard be modified to require that the MGL have an endorsement that names a vessel or shoreside processor as a party that that will be indemnified against a lawsuit or other legal action that seeks redress of an observer injury or death.

Comment 3. Gallagher and LIG Marine Managers commented that the preamble of the proposed rule incorrectly suggested that there is a distinction between a MEL policy and a policy for maritime liability to cover claims under the Jones Act and General Maritime Law (GML). There is no difference between the two policies because MEL is a policy for maritime liability that covers claims under the Jones Act and GML.

Response. NMFS agrees that an MEL policy covers claims under the Jones Act and GML. In the preamble to the proposed rule, NMFS used the same terminology reflected in existing regional observer program regulations. North Pacific and West Coast program regulations require coverage for maritime liability to cover Jones Act and GML claims while the Northeast program regulations require the same coverage but describe it as an MEL policy. This rule includes an MEL policy and, as NMFS explained in the proposed rule, the purpose of that policy is to provide coverage for Jones Act and GML claims.

Comment 4. Gallagher commented extensively on the applicability of the U.S. Longshore and Harborworkers Compensation Act (LHWCA), the Jones Act, and GML to observers and expressed support for requiring observer providers to have insurance for observer claims for benefits under these authorities. Gallagher asserted that if LHWCA applies to observers on land,

it must also be applicable to observers while deployed on a vessel in US navigable waterways. Gallagher referenced analysis by insurance expert Vincent Gullette, of American Equity Underwriters, that is documented in NMFS' Fisheries Observers Insurance, Liability and Labor Workshop Technical Memorandum, dated June 12-14, 2001, available at Observer Insurance Tech Memo.

According to Mr. Gullette, observers may not be covered under the LHWCA because they do not meet the criteria for longshore status. Observers may be considered "aquaculture workers" for purposes of the LHWCA, and, as such, would be excluded from coverage under that authority. But if not considered "aquaculture workers," they would be covered under the LHWCA whether on land or at-sea. Gallagher expressed support for the finding of that insurance expert and NMFS' finding that, because observers are not vessel crew, neither the Jones Act nor GML apply to them. Notwithstanding, Gallagher expressed support for inclusion of LHWCA coverage and MEL coverage for Jones Act and GML claims in the rule. While observers may not have the requisite status needed to recover benefits under these authorities, observers are nonetheless free to pursue such benefits and that could result in significant legal costs for observer providers.

Response. NMFS agrees that the details of whether and how the LHWCA, Jones Act, and GML apply to observers are unclear in some cases. Regardless of these uncertainties, NMFS agrees that a minimum suite of insurance for observer provider operations must include coverage for claims under those authorities, and thus made no change to the final rule as a result of this comment. NMFS notes that the minimum insurance standard is designed to be narrowly tailored to cover the reasonable risks, but not every possible risk, that may arise with observer provider operations. As explained in the proposed rule, based on independent research and extensive outreach efforts to insurance experts, observer providers, and other government agencies, NMFS determined that the LHWCA applies only to shoreside incidents. While deployed on a vessel under the MSA or the Marine Mammal Protection Act, observers have status as Federal

employees for purposes of compensation under the Federal Employee Compensation Act. See 16 U.S.C. 1881b(c). Accordingly, because observers can seek FECA benefits for injuries sustained while deployed on a vessel, NMFS concluded that, for purposes of the minimum insurance standard, observer providers need only obtain LHWCA coverage for observers when they perform duties shoreside. Nonetheless, the minimum insurance standard establishes a floor, not a ceiling, for the appropriate insurance policy types and levels of associated insurance policy coverage amounts. Thus, this rule would not prevent an observer provider from having broader insurance or higher coverage amounts than what is required under the minimum standard.

NMFS agrees that observers do not have the requisite status for Jones Act and GML claims, but also agrees that the minimum standard should include an MEL policy to address legal costs should observers pursue Jones Act or GML claims. Moreover, as NMFS explained in the proposed rule, an MEL policy is appropriate to cover certain GML benefits that do apply to incidents at-sea involving observers, specifically potential remedies related to claims based on Unseaworthiness, Wrongful Death, Transportation, Wages, Maintenance and Cure, and the Death on the High Seas Act.

Comment 5. LIG Marine Managers commented as follows on LHWCA and State Workers' Compensation policies. LHWCA and State Workers' Compensation policies are always issued to provide statutory coverage, thus it is not necessary to specify "at statutory limits" in the rule. The requirement for State Workers' Compensation should be changed to apply for "all states of operation" because some observer programs involve multiple states. LHWCA and State Workers' Compensation policies include a sublimit for employers' liability (EL) and that sublimit should be increased to \$1 million. LIG Marine Managers illustrated these comments, and those in comment 6, in Table 1 below.

Response. NMFS agrees that LHWCA and State Workers' Compensation policies issued by insurance carriers provide statutory coverage. No change is needed in the rule, as reference to "at statutory limits" was not in the proposed regulatory text, only in the preamble. NMFS does

not agree that the requirement for State Workers' Compensation should be revised to require coverage in "all states of operation". As explained in the proposed rule, the minimum insurance standard applies only when NMFS regulations require observer provider companies to obtain approval or a permit to deploy a person in any mandatory or voluntary observer program. The North Pacific, West Coast, and Northeast observer programs have such regulatory requirements, whereas the Southeast, Southwest and Pacific Islands programs do not, as they currently operate only under a direct contract model. Requiring that State Workers' Compensation (or other policies) cover "all states of operation" would be overly broad for the former programs, which are subject to approval or permitting under regulations for particular fisheries and not for all states where they might operate. While direct contract programs are not subject to this rule, as explained in the proposed rule, NMFS will apply the minimum insurance standard in this rule as a condition of direct contracts for observer provider services by adding that standard to the National Oceanic and Atmospheric Administration's Acquisitions and Grants Office Policy Manual. NMFS contracts with observer providers for services in specific fisheries, and thus, as with the regulations-based programs, believes requiring coverage in "all states of operation" would be overly broad.

Comment 6. LIG Marine Managers commented that commercial general liability coverage, which generally does not apply to any vessel-based operations, should be a component of MGL with a minimum of \$1 million. Policy coverage amounts for MEL, EL, and MGL can be identified at common market limits, e.g., \$1 million for each respective policy, but some insurance carriers prefer to write them differently. It does not matter how these coverage amounts are set out in any combination of primary and excess layers as long the total coverage is equal to or greater than the total of the coverage amounts required for each policy. LIG Marine Managers submitted Table 1 with its comments, which illustrates its recommendations summarized under Comments 5 and 6.

Table 1 -- LIG Marine Managers' Recommendations

State Worker's Compensation Coverage (WC)	LHWCA (Longshore)	Employers Liability (EL)	Marine Employer's Liability (MEL) covering Jones Act/GML Seamen's claims coverage	Marine General Liability (MGL)	Excess or Umbrella Coverage over MGL, EL and MEL
Must meet requirements within all state(s) of operation: Statutory Limit	Monoline or endorsed to the WC policy Statutory Limit	As part of the WC coverage \$1 million	\$1 million per occurrence	\$1 million per occurrence	\$2 million minimum
<i>Any combination of primary and excess policies can be provided for the EL, MEL and MGL in order to achieve the total limits required above.</i>					

Response. NMFS agrees that some insurance carriers may craft policy coverage amounts differently than the market standard. Those variations do not weaken coverage so long as the total coverage of each policy is equal to or greater than the sum of what is required for each policy. Accordingly, this final rule amends the regulatory text of the proposed rule at 50 CFR 600.748 by adding a new paragraph (d) to include flexibility in satisfying the coverage amounts required for MGL and MEL policies.

With regard to the comment on an EL policy sublimit for LHWCA and State Workers' Compensation policies, NMFS believes that the standard limit for EL coverage is sufficient. Moreover, the purpose of this rule is to address the risks that observer provider operations present for fishing vessels and shoreside processors. An EL policy would do little to advance that purpose because it is intended to address the risks associated with lawsuits in which employees allege that their employers negligently created an unsafe work environment. Coverage that only addresses negligence claims by observers against observer providers – which to our knowledge are rare – would not mitigate the financial risks that observer deployments present for fishing vessels subject to observer coverage. NMFS reiterates that, as with all elements of the minimum standard in this rule, observer providers can choose to increase EL coverage as they deem necessary to address their operational needs.

Changes from the Proposed Rule

As described above in the Responses to Public Comments section, in response to public comments and after further agency consideration, in this final rule NMFS has added a new paragraph (d) to section 600.748 to allow policy coverage amounts for Marine General Liability and Marine Employers' Liability under paragraph (b)(1) and (2) respectively to be higher or lower than the specified amounts so long as the total is equal to or greater than the combined specified amounts (*i.e.*, so long as the combined coverage for these policies is \$2 million). Paragraphs (b)(1) and (2) were revised to include cross-references to paragraph (d).

Table 2 – Final Minimum Insurance Standard

LHWCA	State Workers' Compensation Coverage (WC)	Marine General Liability (MGL)	Marine Employer's Liability (MEL)	Excess or Umbrella Coverage
Required \$1 million coverage	Must meet requirements within state of operation	Required \$ 1 million per occurrence	Required \$ 1 million per occurrence	Required \$ 2 million per occurrence
Coverage amounts specified for MGL and MEL may be higher or lower for each respective policy so long as the combined coverage for these policies is \$2 million.				

In addition, NMFS has clarified the preface of paragraph 600.748(c) by replacing the phrase “policy coverages” with the phrase “scope of coverages,” which is a more accurate description of that paragraph.

Classification

NMFS issues this final rule pursuant to Magnuson-Stevens Act (MSA) section 305(d), which provides the Secretary of Commerce with general responsibility to carry out any FMP or FMP amendment, and to promulgate regulations as may be necessary to discharge such responsibility (16 U.S.C. 1855(d)). The NMFS Assistant Administrator has determined that this final rule is consistent with the MSA and other applicable laws.

NEPA Determination

NOAA's Policy and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (NOAA Administrative Order (NAO) 216-6A and

Companion Manual for NAO 216-6A) provide that all NOAA major Federal actions be reviewed with respect to environmental consequences on the human environment. Based on the NAO and Companion Manual, NMFS examined the proposed rule for its potential to impact the quality of the human environment and concluded that it would not have a significant adverse effect, individually or cumulatively, on the human environment and would not involve any extraordinary circumstances listed in the Companion Manual. NMFS has made the same conclusion for the final rule, and received no public comments related to effects on the human environment. Furthermore, NMFS determined that this final rule may appropriately be categorically excluded from the requirement to prepare either an environmental assessment or environmental impact statement in accordance with the categorical exclusion described at G7 in the Companion Manual for NAO 216-6A, Appendix, page E-14, which applies to preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Regional regulatory programs that authorize an observer provider to deploy a person in any mandatory or voluntary observer program and that specify responsibilities of authorized providers already include insurance requirements. Thus, to operate in these programs, observer providers already must demonstrate that they have the insurance specified in the applicable regulations.

Due to the nuances of maritime law and the unique nature of observer deployments, regions have adopted differing insurance requirements that are in some cases overly burdensome and inefficient. This action would provide a national standard that clarifies the types and

amounts of insurance and associated coverage amounts that best address the financial risks of observer provider operations regardless of the fishery or region in which an observer provider operates. In some cases, compliance with the final national insurance standard would require observer providers to have insurance that is different from what they are required to have under current regulations. While this final action could change the suite of insurance that observer providers are required to have, it does not make substantive increases to the insurance that is required in current regional programs.

For these reasons, we do not expect this action to result in a significant increase in the premiums that observer providers currently pay. In fact, the action could result in lower premiums due to the increased efficiency of having a national standard and the fact that the standard does not include certain coverages that are required under current regulations. Additionally, section 600.748(d) of the final rule has modified how the coverage amounts for MGL and MEL may be met, which provides greater flexibility to observer providers.

Paperwork Reduction Act

This action does not contain a change to a collection-of-information requirement for purposes of the Paperwork Reduction Act. NMFS' regional observer program regulations that authorize observer providers or that specify authorized provider responsibilities already include procedures for demonstrating compliance with program insurance requirements, and this proposed rule would not change those procedures. The following existing collection of information requirements would continue to apply, under the following control numbers: (1) 0648-0318, Alaska Observer Program (applies to the North Pacific Observer Program); (2) 0648-0500, An Observer Program for At-Sea Processing Vessels in the Pacific Coast Groundfish Fishery; and (3) 0648-0546, Northeast Region Observer Providers Requirements. Note that, while this action would make clear that the existing regulations for the West Coast Catcher Processor Program (50 CFR 660.160) include insurance requirements for permitted observer providers (by adding a reference to the minimum insurance standard to the program's

regulations), the collection of an insurance certificate from observer providers that are permitted to operate in this program is already covered under the existing control number 0648-0500, An Observer Program for At-Sea Processing Vessels in the Pacific Coast Groundfish Fishery.

Final Regulatory Flexibility Analysis

In compliance with section 604 of the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA), which is included below.

In the **Response to Comments** section above, NMFS clarified that insurance policies for State Workers' Compensation and LHWCA are routinely issued "at statutory limits" and, therefore, that the level of coverage need not be specified in this final rule as it had been in the preamble to the proposed rule. NMFS also revised the regulatory text of the proposed rule at 50 CFR 600.748 by adding a new paragraph (d) to provide an observer provider with flexibility in satisfying required policy coverage amounts for Marine General Liability (MGL) and Marine Employers' Liability (MEL). Specifically, new paragraph (d) allows coverage amounts for those policies to be higher or lower than the specified amounts so long as the combined total coverage is equal to or greater than the required amounts for each respective policy. Neither the clarification to the coverage amount required for State Workers' Compensation and LHWCA, nor the addition of new paragraph (d) adding flexibility for satisfying the coverage amounts for MGL and MEL, have any cost implications.

No economic issues were raised by public comment, and, therefore, no changes to this final rule were made in response to public comments of an economic nature. NMFS received no comments on the initial regulatory flexibility analysis (IRFA), nor any comments from the Office of Advocacy for the Small Business Administration. NMFS does not have any new information to take into account for purposes of that analysis. For these reasons, the FRFA provided below, with the exception of non-substantive technical updates, reflects the initial regulatory flexibility analysis that NMFS prepared for the proposed rule.

Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this final rule are discussed in the preamble above and in the proposed rule and are not repeated here.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Final Rule

The objective of this final rule is to promote effective operation of regional observer programs by ensuring that observer providers have a nationally consistent suite of insurance coverages that properly addresses the financial risks of their operations, regardless of the fishery observed or the region in which the provider operates. The legal basis for this rule is 16 U.S.C. 1855(d). No other Federal rules duplicate, overlap, or conflict with this proposed rule.

Number and Description of Small Entities Regulated by the Final Action

Currently, there are six companies that provide observer services in a NMFS mandatory or voluntary observer program. These entities, which would be directly regulated by this rule include: A.I.S. Inc.; Alaskan Observers, Inc.; Saltwater, Inc.; TechSea International; Fathom Resources LLC; and East West Technical Services, LLC. Four of these entities operate in the North Pacific Observer Program. Three operate in the West Coast Observer Program, and two operate in the Northeast Observer Program. The specific NMFS regional observer programs in which these companies may be permitted or approved to deploy observers are as follows: the North Pacific Observer Program, 50 CFR 679.52; the West Coast Groundfish Observer Program, 50 CFR 660.16; the West Coast Catch Monitor Program, 50 CFR 660.17; the West Coast Groundfish Observer and Catch Monitor Provider Permits Program, 50 CFR 660.18; the West Coast Shoreside IFQ Program, 50 CFR 660.140; the West Coast Mothership Cooperative Program, 50 CFR 660.150; the West Coast Catcher Processor Cooperative Program, 50 CFR 660.160; the program for Northeast at-sea sampler/observer coverage, 50 CFR 648.11(h); and the Northeast Multispecies at-sea sector monitoring program, 50 CFR 648.87(b)(4). The information available to NMFS indicates that the principal activity of most of these companies is

providing observers. All of the current observer provider companies are considered small entities under the RFA.

Additionally, firms interested in obtaining approval or a permit to provide observer services under a NMFS regional observer program in the future would be regulated under this rule. Observer provider services are specialized services, and NMFS does not know how many other firms might want to become providers in the future. In any event, NMFS anticipates that any new providers would be considered small entities. For purposes of the RFA, NMFS established a small business size standard (NAICS 11411) for all businesses in the commercial fishing industry including their affiliates, whose primary industry is commercial fishing. (See 80 FR 81194; 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all of its affiliated operations worldwide. Based on available information, NMFS has determined that all six of these companies are small entities, i.e., they are engaged in the business of fish harvesting (NAICS 11411), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million.

Even though this rule would apply to a substantial number of the relevant businesses, the implementation of this action would not result in a significant adverse economic impact on individual companies. As described below, this rule could result in possible changes in insurance costs for these companies, ranging from an increase of approximately \$10,000 to an approximate decrease of a similar amount. This range includes potential benefits to the companies stemming from clarifying requirements and allowing them to drop certain insurance policies that NMFS has determined to be no longer necessary.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This final rule does not include new reporting, recordkeeping, or other compliance requirements. As noted under the Paperwork Reduction Act header above, NMFS' regional observer program regulations that authorize observer providers or that specify authorized provider responsibilities, already include procedures for demonstrating compliance with program insurance requirements, and this proposed rule would not change those procedures.

Description of Any Significant Alternatives to the Final Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Final Rule on Small Entities

As required by 5 U.S.C. 604(a), NMFS' analysis considered whether there are any significant alternatives to the proposed rule that would accomplish its stated objectives while minimizing any significant economic impact on small entities. To identify alternatives, NMFS took several information gathering actions. In 2016, NMFS held an Observer Provider Insurance Workshop (2016 Workshop), which was attended by marine insurance experts, observer providers, observer representatives, and officials from relevant federal and state agencies. Additionally, in 2018, NMFS issued a Request for Information (2018 RFI) in which it asked for input on an appropriate suite of insurance and associated coverage amounts for observer providers (83 FR 32829, July 16, 2018). Through this engagement, NMFS identified no alternatives to the proposed rule that would reasonably address the unique risks that observer coverage presents for observer providers, observers, and the industry that is subject to observer coverage requirements. After considering public comment on the proposed rule, NMFS determined that there were no significant alternatives to the final rule. Therefore, in the proposed rule and this final rule, NMFS analyzed only whether this action would have a significant economic impact on observer providers, all of which are small entities.

Whether this final rule would have a significant economic impact depends upon whether carrying the required policies under the minimum national standard would result in increased premiums compared to the premiums that observer providers currently pay to comply with

existing regional requirements. However, for both the proposed and final rules, NMFS lacked the precise baseline information on existing premium costs that is necessary to determine, with any specificity, the economic impact that may result from the rule. During development of the proposed rule, NMFS attempted to obtain baseline information on current observer provider insurance premium costs through outreach to the six companies that provide observer services in a NMFS mandatory or voluntary observer program. However, these companies viewed insurance cost information as proprietary, and, therefore, declined to provide details of their insurance costs or estimates of what premium costs would be to comply with the proposed national minimum standard. Nonetheless, based on the limited information that these companies did provide, NMFS estimated that current observer provider insurance premiums cost less than \$5,000 per employee. It is possible that this action could result in a decrease of premiums from the estimated \$5,000 per employee baseline, due to cost savings from lower premiums, from the consolidation of policies, or from the cancellation of policies that are no longer necessary. It is also possible for a premium increase to an outer bound of \$10,000 per employee if a company previously had no policy coverage at all. Using these general assumptions, NMFS developed ranges in observer provider premium changes that could result from the proposed rule, if finalized and implemented (see table 3 below).

To form an accurate assessment of the economic impact that may result from the rule, in the proposed rule, NMFS specifically requested public comment on whether the magnitude of the ranges described below accurately captures the likely premium changes that may result from the rule and which of these ranges is most likely to apply upon implementation of this final rule.

Table 3 - Estimated Ranges of Observer Provider Premium Changes

Insurance Premium Increases	Insurance Premium Decreases
\$0 to \$2,500 per employee	\$0 to \$2,500 per employee

\$2,500 to \$5,000 per employee	\$2,500 to \$5,000 per employee
\$5,000 to \$7,500 per employee	\$5,000 to \$7,500 per employee
\$7,500 to \$10,000 per employee	\$7,500 to \$10,000 per employee

NMFS received no comments on the premium ranges in the table, the table in general, or other aspects of the Initial Regulatory Flexibility Act analysis. NMFS also did not receive comments on or related to baseline information on observer provider insurance premium costs, and thus the agency's estimates of such costs remains unchanged from the IRFA.

Small Business Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a small entity compliance guide, which will be sent to all interested parties.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, Indians, Recreation and recreation areas, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 31, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600, 648, 660, and 679, are amended as follows:

PART 600 -- MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Add § 600.748 to subpart H to read as follows:

§ 600.748 National Minimum Observer Provider Insurance Standard.

(a) *Applicability.* As part of regulations for observer provider companies to obtain approval or a permit to deploy a person in any mandatory or voluntary observer program, or regulations that specify approved or permitted observer provider responsibilities, NMFS must reference and ensure compliance with the following national minimum insurance standard.

(b) *Policies and Coverage Amounts.* (1) Marine General Liability (\$1 million any one occurrence or as provided under paragraph (d) of this section).

(2) Marine Employers Liability (\$1 million any one occurrence or as provided under paragraph (d) of this section) for an observer provider that is authorized, or has applied to be authorized, to deploy observers or monitors at-sea.

(3) State workers' compensation as required by each state in which the observer provider is authorized, or has applied to be authorized, to deploy observers or monitors at-sea or shoreside.

(4) U.S. Longshore and Harbor Workers' Act coverage, either as a stand-alone policy or as a state workers' compensation policy endorsement, if that policy or a policy endorsement is required by the respective state(s) in which the observer provider is authorized, or has applied to be authorized, to deploy observers or monitors at-sea or shoreside.

(5) Excess or umbrella coverage (\$2 million any one occurrence).

(c) *Scope of coverages.* Coverage must extend to injury, liability, and accidental death during the period of employment, including training, of observers or monitors at-sea or shoreside.

(d) *Combined coverage amounts.* Coverage amounts specified for Marine General Liability and Marine Employers Liability may be higher or lower for each respective policy so long as the combined coverage for these policies is \$2 million.

PART 648 -- FISHERIES OF THE NORTHEASTERN UNITED STATES

3. The authority citation for 50 CFR part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 648.11, revise paragraph (h)(3)(vii) to read as follows:

§ 648.11 Monitoring coverage.

* * * * *

(h) * * *

(3) * * *

(vii) Evidence of holding insurance specified at § 600.748(b) and (c) of this chapter.

* * * * *

5. In § 648.87, revise paragraph (b)(4)(i)(G) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(G) Evidence of holding insurance specified at § 600.748(b) and (c) of this chapter.

* * * * *

PART 660--FISHERIES OFF WEST COAST STATES

6. The authority citation for 50 CFR part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

7. In § 660.17, revise paragraph (f)(1)(vii)(B) to read as follows:

§ 660.17 Catch monitor program.

* * * * *

(f) * * *

(1) * * *

(vii) * * *

(B) The observer provider must submit copies of "certificates of insurance," that names the Catch Monitor Program Coordinator as the "certificate holder" to the Catch Monitor Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

8. In § 660.140, revise paragraph (h)(5)(xi)(C) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(h) * * *

(5) * * *

(xi) * * *

(C) *Certificates of insurance.* The observer provider must submit copies of "certificates of insurance" that name the Northwest Fisheries Science Center Observer Program manager as the "certificate holder" to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

9. In § 660.150, add paragraph (j)(4)(xi)(A)(6), and revise paragraph (j)(4)(xi)(B)(3) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(j) * * *

(4) * * *

(xi) * * *

(A) * * *

(6) *Certificates of insurance.* The observer service provider must submit copies of "certificates of insurance" that name the Northwest Fisheries Science Center Observer Program manager as the "certificate holder" to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(B) * * *

(3) *Certificates of insurance.* The observer provider must submit copies of "certificates of insurance" that name the Northwest Fisheries Science Center Observer Program manager as the "certificate holder" to the Observer Program Office by February 1 of each year. The certificates

of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

10. In § 660.160, add paragraph (g)(1)(v) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(g) * * *

(1) * * *

(v) *Certificates of insurance.* The observer provider must submit copies of "certificates of insurance" that name the Northwest Fisheries Science Center Observer Program manager as the "certificate holder" to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

11. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111-281.

12. In § 679.52, revise paragraph (b)(11)(vi) to read as follows:

§ 679.52 Observer provider permitting and responsibilities.

* * * * *

(b) * * *

(11) * * *

(vi) *Certificates of insurance.* Copies of “certificates of insurance” that name the NMFS Observer Program leader as the “certificate holder” must be submitted to the Observer Program by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

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